Such resolution is competent as bearing on its negligence, even though defendant was not relieved of duty to keep street in repair by reason of action of city. *Snell v. Ry. Co.*, 19 N. Y. Sup. 476. The dissenting judges argue from *Conway v. Rochester*, 51 N. E. 395, that Ry. statute is mandatory and city has no authority to relieve Ry. Co. of its duty but only to supervise. Defendant is also negligent for stopping car opposite the hole. *Wolf v. Ry. Co.*, 74 N. Y. Sup. 336.

NEGLIGENCE—WALLS OF BURNED BUILDING—CARE REQUIRED OF OWNER—DAMAGES.—AINSWORTH V. LAKIN, 62 N. E. 746 (Mass.).—*Held*, where walls of a burned building, which could not be used in rebuilding, were left standing without any precaution being taken to prevent their falling, the owner, after a reasonable time in which to take such steps
jury from the wall, is liable for all damages caused thereby.

Any person who for his own purpose brings on his land and collects and keeps anything likely to do mischief if it escapes, must keep it in at his peril. *Fletcher v. Rylands*, L. R. 3 H. L. 330. This rule has been applied to cesspools, *Ball v. Nye*, 99 Mass. 582; to artificial reservoirs, *Gray v. Harris*, 107 Mass. 492; to accumulation of snow and ice upon a building by reason of the shape of its roof, *Shipley v. Fifty Associates*, 106 Mass. 194; and to an ordinary wall; *Gorham v. Gross*, 125 Mass. 232; *Channtler v. Robinson*, 4 Exch. 163. The only exceptions to the liability which have been judicially recognized are in cases of the plaintiff's own fault, or acts of God, or acts of third persons, which the owner had no reason to anticipate.

RES JUDICATA—EQUITABLE RELIEF—COMMERCIAL UNION ASSUR. CO., LIMITED, V. NEW JERSEY RUBBER CO., 51 Atl. Rep. 451 (N. J.).—Insurance company issued policy with agreement that other concurrent insurance should be procured and so distributed that liability under said policy should be for a proportionate part only of any given item of loss. After occurrence of fire loss, such proportionate part of indemnity was tendered, policy was canceled and unearned premium returned. Insured, having failed to procure the agreed concurrent insurance, brought action at law on policy which was allowed to proceed to judgment, this being that validity of policy had been recognized by cancellation. *Held*, that such adjudication did not make liability on policy *res judicata* so as to prevent court of equity from entertaining bill of relief, for the matter *in pais* had different significance in court of law from that in court of equity. Gummere, C. J., and Fort, Pitney, Adams, and Vredenburg, J. J., dissenting.

This decision draws a distinction between those judgments at law as to matter which has the same significance in courts of law and of equity, and those as to matter having different significance in the two courts. It expresses a broader and more just rule of law than the strict rule admitting no such distinction followed in *Hendrickson v. Hinckley*, 58 U. S. (17 How.) 443; *Breckenridge v. Peter*, Fed. Cas. No. 1,825 (4 Cranch, C. C. 15).

TRADE-NAMES—SUIT AGAINST CORPORATIONS FOR INFRINGEMENT—THE PECK BROS. & CO. V. PECK BROS. ET AL., 113 FED. REP. 291 (C. C. A.).—The fact that a corporation has been chartered by a State under a certain name, which it selected, does not afford it immunity from a suit in a Federal Court

by a corporation of another State to enjoin it from prosecuting its business under such name, where the name was deliberately and fraudulently adopted by its incorporators in imitation of the complainant's.

The defendants relied upon the case of *Hazelton Boiler Co. v. Hazelton Tripod Boiler Co.*, 142 Ill. 494, in which the opposite doctrine is well stated. In that case the Court argued that the name of the corporation was conferred by the State as an act of sovereignty, and that a foreign corporation cannot assert rights in contravention of its laws. The Court refuted that theory upon the ground that the name is not conferred by the State but is chosen by the incorporators, and that the act of sovereignty allowing incorporation is permissive, not mandatory. This appears to be the better view since the other would have the effect to protect a corporation from the consequences of its own wrong. The contrary practice though established in Illinois has found little favor in the courts of other states. *Higgins Co. v. Higgins Soap Co.*, 144 N. Y. 462, 43 Am. St. Rep. 769; *Holmes, Booth & Hayden v. Holmes & Atwood Mfg. Co.*, 37 Conn. 278, 293, 9 Am. Rep. 324.

VERDICT—DIRECTING VERDICT.—CAMPBELL V. MANUFACTURERS' NAT. BANK, 51 Atl. Rep. 497 (N. J.).—*Held*, that where bank cashier conducts his individual transactions with bank's drafts, the regular entry on stub of draft book of such acts is no evidence that bank's directors and president had knowledge of and ratified such acts for no fraud could be detected short of an investigation of bank's books and there was no error in directing verdict accordingly. Magie, Ch., and Dixon, Collins, Garretson, Vredenburgh, and Voorhees, J. J., dissenting.

This decision appears to be a departure from the tendency of New Jersey cases as in *Railroad Co. v. Moore*, 24 N. J. L. 830; *Transportation Co. v. West*, 33 N. J. L. 432; *Railroad Co. v. Shelton*, 55 N. J. L. 342. It follows, *Bank of New York Nat. Banking Ass'n v. American Lock and Trust Co.*, 143 N. Y. 559, 564; *Manhattan Life Ins. Co. v. Forty-Second and G. St. Ferry Co.*, 139 N. Y. 146. The weight of the law seems to be against the decision, that is, such questions should be left to the jury.

WILLS—MENTAL INCAPACITY—TESTIMONY OF PHYSICIAN.—JONES V. COLLINS ET AL., 51 Atl. 398 (Md.).—Where a physician has never attended a testator professionally, but has twice prescribed for him, *held*, that his opinion as to mental capacity is admissible without first stating circumstances upon which it is founded. Pearce, J., dissenting.

Whether mere prescription will so constitute one an attending physician has not hitherto been decided. The dissenting opinion would seem to be deduced from good authority in reasoning that it would not, as prescription might be for any cause other than such as would give one an opportunity of observing a patient's mental condition, and this ought clearly to appear. *Waters v. Waters*, 35 Md. 542; *Com. v. Rich*, 14 Gray 335; *Hastings v. Rider*, 99 Mass. 622.